IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1607 OF 2005.

Gunwantrao Shankarrao Patil. ... Appellant.

Versus.

Baban Babu Kambale. ... Respondent.

Shri A.A.Kumbhakoni i/by Shri A.P.Kulkarni for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Heard the learned Counsel for the Appellant. The Appellant in the Second Appeal is the original Plaintiff. The trial Court dismissed the suit filed by the Appellant/Plaintiff for injunction restraining the Respondent/Defendant from interfering with the possession of the Appellant over the suit property. A prayer was also made for removal of encroachment which also came to be rejected. An Appeal was preferred by the Appellant in the District Court. In the Appeal the finding of the District Court is that the Respondent was put in possession in part performance of an agreement of sale and that the entire consideration payable under the agreement has been paid by the Respondent. Therefore, it was held that the Respondent was entitled to protect his possession by invoking section 53A of the Transfer of Property Act, 1882.

2. Shri Kumbhakoni appearing for the Appellant

submitted that the agreement for sale itself was void as permission under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 was not obtained. He, therefore, submitted that section 53A of the said Act of 1882 cannot apply.

3. I have considered the submissions. The case of the Respondent that he came in possession in part performance of the agreement of sale has been accepted by the Courts below. It is not the case of the Respondent that there is a sale deed executed by the Appellant in his favour attracting bar of section 43 of the said Act of 1948. The Courts below have accepted that the entire consideration under the agreement for sale was paid by the Respondent to the Appellant. In view of this position, no fault can be found if the Courts below held that the Respondent was entitled to protect his possession under section 53A of the Transfer of Property Act 1882. No substantial question of law arises. Second Appeal is dismissed.

Judge.